


## Department of Planning and Zoning

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Burlington, VT 05401  
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*David White, AICP, Director*  
*Ken Lerner, Assistant Director*  
*Sandrine Thibault, AICP, Comprehensive Planner*  
*Jay Appleton, GIS Manager*  
*Scott Gustin, AICP, Senior Planner*  
*Mary O'Neil, AICP, Senior Planner*  
*Nic Anderson, Zoning Clerk*  
*Elsie Tillotson, Department Secretary*



**TO:** Development Review Board  
**FROM:** Scott Gustin   
**DATE:** June 17, 2014  
**RE:** 14-1108VR; 451 Appletree Point Road

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**Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: WRL                      Ward: 4

Owner/Representative: David & Brianne Chase / Al Senecal

**Request:** Variance from front yard and lakefront setbacks to construct a new single family residence in place of existing camp.

### **Applicable Regulations:**

Article 12 (Appeals and Variances)

### **Background Information:**

The applicant is seeking a variance from applicable front yard and waterfront setbacks on a lot containing a seasonal camp. The lot was created in 2004 under the previous zoning and subdivision regulations. These previous regulations contained standards different from those in effect today. The front yard setback at the time was 15', and the waterfront setback was 50'. Today's front yard setback is based on the average of neighboring properties (in this case 106' +/- 5'), and the waterfront setback is 75'. The requested variance seeks a 25' front yard setback (~ 22' from the road's edge) and an 18' waterfront setback.

Written public comment has been submitted that asserts the property owners were aware of the waterfront setback restrictions at the time of subdivision under the prior subdivision regulations and should not be granted relief from this setback by way of variance. Indeed, there was a 50' waterfront setback in place at the time of subdivision as noted above. However, as noted in these findings, the variance from the waterfront setback is unnecessary and unwarranted.

No development is included in this application. The variance is sought as a precursor demolition of the camp and construction of a single family home to be filed under separate permit if the variance is granted.

Previous zoning actions for this property are as follows:

- 1/13/04, Denial of 3-lot subdivision
- 7/26/04, Approval of 2-lot subdivision

**Recommendation: Variance approval of front yard setback requirement** as per, and subject to, the following findings and conditions:

## **I. Findings**

### **Article 12: Variances and Appeals**

#### **Sec. 12.1.1 Variances**

*(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.*

The lot is not especially small at about ½ acre, nor is it particularly irregular. As with the neighboring property at 465 Appletree Point Road, the problem stems entirely from the way the front yard setback is calculated per Table 4.4.5-3: *Residential District Dimensional Standards*. The front yard setback is based on the average of 2 adjacent lots on both sides of the subject lot, +/- 5'. In this case, the front yard setback is based solely on 395 Appletree Point Rd to the east. The next lot further east is vacant, and the two lots to the west are vacant. The application indicates an applicable front yard setback of 100'. Staff measurements based on the boundary survey of 395 Appletree Point Rd shows an applicable setback of 106', +/- 5'. This discrepancy needs to be resolved. A front yard setback of 106' places any potential new development into the lake. Compliance with the front yard setback is impossible.

The key difference between this property and neighboring 465 Appletree Point Rd is the presence of a camp structure on this lot whereas 465 is vacant. There is an argument that the existing structure, even though nonconforming relative to the front yard setback, allows for reasonable use of the property and negates variance approval. Conversely, the building is a seasonal camp. Any renovations to the structure that affect its existing envelope would be prohibited by the 106' front yard setback. The camp structure is effectively frozen as is. The requested variance would allow for a 25' front yard setback like that requested at 465 Appletree Point Road and would allow for reasonable redevelopment of the property with a single family home. **(Affirmative finding as conditioned)**

The requested variance from the 75' waterfront setback is unnecessary. While the 75' waterfront setback overlaps substantially with the 106' front yard setback, the waterfront setback is considerably more flexible. Sec. 4.4.5, *Residential Districts*, (d) 1, B, *Encroachments into the Waterfront Setback*, (i) allows replacement of a principle structure with a new structure in the same location so long as the new structure does not increase the extent or area of encroachment. The existing structure is 17' – 4' from the waterfront, varying with the 100' elevation. The requested 18' setback complies with this criterion by not increasing the extent of encroachment. So as to avoid increasing the area of encroachment (the 75' setback reaches close to the road), the new structure would be limited to the 1,215 sf footprint of the existing primary structure. Such a footprint enables construction of a reasonably sized single family home. No variance is needed. **(Adverse finding)**

*(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and*

*that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.*

As noted above, the 106' front yard setback reaches across the entire property and into the lake. Any new construction or renovation outside of the existing building envelope would be prohibited. Compliance with the front yard setback is impossible. **(Affirmative finding)**

As noted above, no variance from the waterfront setback is necessary. The provisions of Sec. 4.4.5 allow retention of the existing extent and area of encroachment. **(Adverse finding)**

*(c) The unnecessary hardship has not been created by the applicant.*

The hardship relative to the front yard setback is related to the difference between the pre-existing lot and the setbacks in effect at the time it was created and the present setback requirements. It is not a lot newly created by the applicant under the current regulations. **(Affirmative finding)**

There is no unnecessary hardship relative to the waterfront setback. Retention of a 1,215 sf footprint at or behind the exiting camp structure is sufficient for a new single family home. **(Adverse finding)**

*(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.*

The variance from the requirements of the front yard setback would not alter the essential character of the neighborhood or district in which the subject property is located. The variance would enable the construction of a single family home on a ~1/2 acre lot. Such is the predominant development pattern in this area of the city. **(Affirmative finding)**

The variance from the waterfront setback is unnecessary as noted before. **(Adverse finding)**

*(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.*

The requested 25' front yard setback allows room for a reasonable building envelope and continues to reflect the neighborhood pattern of homes set relatively far back from the road and relatively close to the shoreline. **(Affirmative finding)**

No variance from the waterfront setback is necessary. **(Adverse finding)**

*(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.*

If granted, the variance from the front yard setback requirement would not result in the extension of a noncomplying situation or allow a nonconforming use of land. The variance would simply enable the construction of a single family home. **(Affirmative finding)**

If granted, the variance from the waterfront setback would result in the extension of a noncomplying situation, specifically the area of encroachment into the waterfront setback. It would not, however, allow a nonconforming use of land. **(Adverse finding)**

## **II. Conditions of Approval**

1. This variance approval is for relief from the front yard setback requirement of Table 4.4.5-3, *Residential District Dimensional Standards*. No variance is granted for the waterfront setback.
2. Prior to permit application for construction on the property, the front yard setback shall be verified, subject to staff review and approval.
3. No development is included in this approval. All development is subject to a separate zoning permit.
4. Per Sec. 12.1.3, *Filing a Request, Public Hearing, and DRB Decision*, this variance approval shall be valid for a period of 2 years.

# KREBS & LANSING

Consulting Engineers, Inc.

RECEIVED

MAY 20 2014

DEPARTMENT OF  
**PLANNING & ZONING**  
84 Main Street, Suite 201  
Colchester, VT 05446  
Telephone (802) 878-0375, Fax 878-9618  
email@krebsandlansing.com

May 14, 2014

Scott Gustin  
Burlington Dept. of Planning & Zoning  
149 Church Street  
Burlington, VT 05401

RE: Variance Request -451 Appletree Point  
Lot 1

Dear Scott,

Please find the enclosed Zoning Permit application and plan for Lot 1 of the property located at 451 Appletree Point in Burlington. This property is owned by David and Brianne Chase and is part of a subdivision filed on September 8, 2004. In accordance with the "Variance Request Checklist" we offer the following in addition to our application:

Description of the property to which the variance would apply:

The existing lot is approximately 0.5 acres and currently serves an existing single family home with a garage and boat house. The lot is bounded by the private portion of Appletree Point Road to the north, Lake Champlain to the south, and undeveloped or residential properties to the east and west. Topography is generally flat, except for a 7'-8' high bank along the lakeshore to the south. The property is located in the Waterfront Residential - Low Density District.

Reference to the applicable regulatory provisions:

The existing lot is subject to the regulatory provisions of the *City of Burlington Comprehensive Development Ordinance*, and specifically *Article 4: Zoning Maps and Districts, Sec. 4.4.5 Residential Districts*. Waterfront Residential - Low Density District.

Relief requested by the applicant:

The applicant requests relief from the front yard setback and lakeshore setback requirements as outlined in the Ordinance. This relief will enable the applicant to demolish the existing house and construct a new single family residence on the parcel.

Information and narrative addressing the grounds why such requested relief is believed proper under the variance criteria pursuant to Sec. 12.1.1, Variances:

The existing lot is not developable in accordance with the setbacks outlined in the *Comprehensive Development Ordinance*. The front yard setback and shoreline setback effectively overlap, leaving the lot with no complying building envelope. This hardship is a function of the existing private road accessing the lot and Lake Champlain, and thus has not been created by the applicant.

Scott Gustin  
451 Appletree Point – Lot 1  
May 14, 2014

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MAY 20 2014  
DEPARTMENT OF  
PLANNING & ZONING

The proposed house site and size is in scale with other existing houses on Appletree Point, and will not alter the essential character of the neighborhood or district. The requested setbacks provide for a front yard and setback from the shoreline, while still allowing for a reasonable building envelope on the property. The variance requested will not result in either the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

If you have any questions or comments regarding this application please feel free to contact us at your earliest convenience.

Best regards,



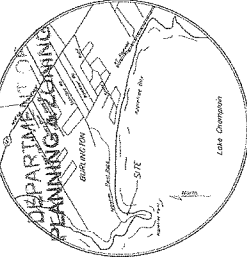
Scott Homsted, P.E. 7893

Enclosures

CC: Al Senecal

14132\Gustin Letter variance.doc

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MAY 20 2014



LOCATION MAP

Surveyor's Certification  
I, the undersigned, being a duly licensed Surveyor of the State of Vermont, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my field notes and as the same appears in the records of the State of Vermont.

Engineer's Certification  
I, the undersigned, being a duly licensed Engineer of the State of Vermont, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my field notes and as the same appears in the records of the State of Vermont.

City Engineer's Certification  
I, the undersigned, being a duly licensed City Engineer of the City of Burlington, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my field notes and as the same appears in the records of the City of Burlington.

City Engineer's Certification  
I, the undersigned, being a duly licensed City Engineer of the City of Burlington, do hereby certify that the foregoing is a true and correct copy of the original survey as the same appears in my field notes and as the same appears in the records of the City of Burlington.

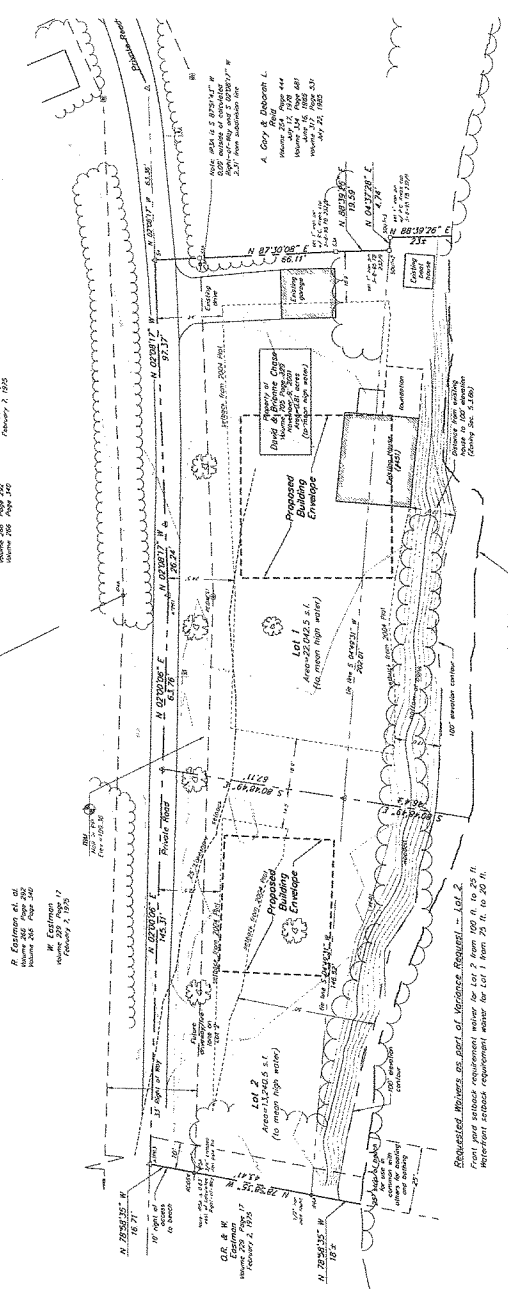
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Proposed Lot Coverage  
Lot 1 (Estimated)  
Buildings = 1,300 S.F.  
Roads/Driveways = 1,400 S.F.  
Total Coverage = 2,700 S.F.  
Lot 2 (Estimated)  
Buildings = 1,300 S.F.  
Roads/Driveways = 1,400 S.F.  
Total Coverage = 2,700 S.F.

Planning and Zoning Information

Owner/Applicant:  
David S. & Brionne E. Chase  
Shelburne, VT 05482

Address:  
0.81 acres (no mean high water elevation - 99)  
Zoned: R-1 (Residential Single-Family)  
For Map of 0.81-1.00-000  
See Survey Map and Notes

Existing Lot Coverage  
Buildings = 1,300 S.F.  
Roads/Driveways = 1,400 S.F.  
Total Coverage = 2,700 S.F.

Boundary Notes  
1. The original boundary of the property conveyed to David & Brionne Chase is shown on the attached map and is shown in red ink.

Map References  
1. Plan showing Subdivision Map, City of Burlington, dated December 9, 1991.  
2. Plan showing Subdivision Map, City of Burlington, dated December 9, 1991.

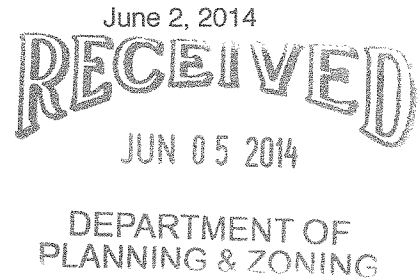
Survey Notes

- All bearings are true and were determined by magnetic north.
- The survey was made on a spring tide and the water level was 100 ft above mean high water.
- A corner monument was found at the intersection of the proposed driveway and the proposed driveway.
- The survey was made on a spring tide and the water level was 100 ft above mean high water.
- The survey was made on a spring tide and the water level was 100 ft above mean high water.

Deed References

Owner	Volume	Page	Recording Date
David S. & Brionne E. Chase	705	229	November 14, 2009
David S. & Brionne E. Chase	660	144	January 25, 2009
David S. & Brionne E. Chase	579	455	December 28, 1994
David S. & Brionne E. Chase	499	255	December 28, 1993
David S. & Brionne E. Chase	379	251	July 26, 1988

Scott Gustin, AICP, CFM  
Department of Planning and Zoning  
City of Burlington  
149 Church St.  
Burlington, Vermont



Dear Mr. Gustin

I am writing to you and your staff to ask the Department of Planning and Zoning to give measured and thoughtful consideration to the two proposals submitted by applicant Al Senecal on behalf of his clients, the Chase's, which ask for extensive variances to long-existing lake and road and/or front yard setbacks. The property, at 451 Appletree Point Road, was purchased by the Chase's from a family relative in 2011. The property sat fallow for many years until the Chase's, acting as applicants, sought to create a three lot subdivision, while "tipping over" the existing nonconforming lakefront setback onto the two newly created lots.

The regulations pertaining to lake front setbacks disallowed setback averaging except for previously existing nonconforming lots. Any newly created lots would have to adhere to the lake front setback (50 feet) standard in force at that time. The applicant was denied the three lot subdivision, and opted for a two lot split with full knowledge of the lake setback regulation. For them to state now in their letter asking for relief, that "this hardship is a function of the existing private road accessing the lot and Lake Champlain, and thus has not been created by the applicant", does clearly not stand the "duck test". The Chase's, and their extended family, the Eastman's have been the majority land owners on the area roughly known as Appletree Point and its approaches, for nearly a century. It seems surprising that they claim they are victims of "hardships" created by long standing ordinances. In fact, their heirs divided the property, and passed them down intact generationally so that there would be adequate setbacks and sufficient spacing to neighbors and to the general feel and "tone" of this last remaining peninsula in Burlington extending out into Lake Champlain.

In addition the applicant, in the letter supporting the variance, states that the "proposed house site and size is in scale with other existing houses on Appletree Point". While this may apply to some homes on the road to the Point, the homes in the vicinity of these lots do not have 2000-3000 square foot footprints. The very largest of the homes along the lake BEYOND the Strathmore neighborhood perhaps have 1200-1400 square foot footprints.

The proposed home sites, which necessitate the requests for variances, would be grossly incompatible with the existing surroundings and neighborhood.

This proposal will, in fact, greatly "alter the essential character of the neighborhood". It will result in behemoth buildings hulking along the shoreline and towering over the modest roadway that runs out to the point and that all homeowners use.

I might add that significant vegetation, including old trees, will be adversely affected as well. Rainwater and lake effect moisture will also lose buffering that exists in this narrow lot.



June 2, 2014

Finally; currently there are approximately 15-20 smaller lots which exist (this letter writer owns one such lot) around these lots under consideration for variances. All have lake frontage and constitute the basis of the geography of Appletree Point. If, as proclaimed by various official statements of the City of Burlington, and adhered to by all who cherish and protect the lake, and I paraphrase, Lake Champlain, the greenspace and its lake frontage add aesthetically and economically to the vitality of Burlington, then the Department of Planning and Zoning must reject these setback variances as requested. By setting precedent in literally eliminating current, long-standing setbacks to allow for these two proposed house sites, you invite the possibility of the entirety of Appletree Point to be one continuous strip of "MacMansions".

I regret that previous commitments prevent me from appearing before the DRB hearing June 17, in person; please let these sentiments, which reflect most of my neighbors on Appletree Point stand as my testimony and be taken into consideration in these proceedings.

I encourage the Planning and Zoning staff and the DRB to go to the site and erect markers or balloons delineating the home sites to truly appreciate the adverse and permanent effect this will have on Appletree Point and its current homeowners. Looking at a plat does not begin to visualize the real effect of this proposal.

Thank you for your time,

Lauritz Larsen



Larsen Land Trust

506 Appletree Point Road

P. O. Box 3023

Burlington Vermont

05408